

Assembly Bill No. 1233

CHAPTER 718

An act to add Section 20010 to the Elections Code, relating to campaign materials.

[Approved by Governor September 21, 1998. Filed
with Secretary of State September 22, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1233, Leach. Elections: campaign material.

Existing provisions of the California Constitution require the Legislature to prohibit improper practices that affect elections. Existing law prohibits a candidate or committee on his or her behalf from representing, in connection with an election campaign, either orally or in campaign material, that the candidate has the support of a committee or organization that includes, as part of its name, the name or any variation upon the name of a qualified political party with which the candidate is not affiliated, as specified, that might tend to mislead the voters into believing that the candidate has the support of that party's county or state central committee, when that is not the case.

This bill would prohibit, except as specified, a person, firm, association, corporation, campaign committee, or organization from, with actual malice, producing, distributing, publishing, or broadcasting campaign material that contains (1) a picture or photograph of a person or persons into which the image of a candidate for public office is superimposed or (2) a picture or photograph of a candidate for public office into which the image of another person or persons is superimposed. The bill would permit that campaign material to be produced, distributed, published, or broadcast if each picture or photograph in the campaign material includes a specified disclaimer, as specified. The bill would define campaign material to include, but not be limited to, any printed matter, advertisement in a newspaper or other periodical, television commercial, or computer image.

This bill would permit any registered voter to seek a temporary restraining order and an injunction prohibiting the publication, distribution, or broadcasting of any campaign material prohibited by the bill. The bill would also permit a candidate for public office whose likeness appears in a picture or photograph prohibited by this bill to bring a civil action against any person, firm, association, corporation, campaign committee, or organization that produced, distributed, published, or broadcast the picture or photograph prohibited by this bill, and the court may award an amount equal to the cost of

producing, distributing, publishing, or broadcasting the campaign material that violated this bill, in addition to reasonable attorney's fees and costs.

The bill would declare that it would not apply to a holder of a license granted pursuant to the federal Communications Act of 1934 in the performance of the functions for which the license is granted, or to the publisher or an employee of a newspaper, magazine, or other periodical, as defined.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known and may be cited as the Truth in Political Advertising Act.

SEC. 2. Section 20010 is added to the Elections Code, to read:

20010. (a) Except as provided in subdivision (b), no person, firm, association, corporation, campaign committee, or organization may, with actual malice, produce, distribute, publish, or broadcast campaign material that contains (1) a picture or photograph of a person or persons into which the image of a candidate for public office is superimposed or (2) a picture or photograph of a candidate for public office into which the image of another person or persons is superimposed. "Campaign material" includes, but is not limited to, any printed matter, advertisement in a newspaper or other periodical, television commercial, or computer image. For purposes of this section, "actual malice" means the knowledge that the image of a person has been superimposed on a picture or photograph to create a false representation, or a reckless disregard of whether or not the image of a person has been superimposed on a picture or photograph to create a false representation.

(b) A person, firm, association, corporation, campaign committee, or organization may produce, distribute, publish, or broadcast campaign material that contains a picture or photograph prohibited by subdivision (a) only if each picture or photograph in the campaign material includes the following statement in the same point size type as the largest point size type used elsewhere in the campaign material: "This picture is not an accurate representation of fact." The statement shall be immediately adjacent to each picture or photograph prohibited by subdivision (a).

(c) (1) Any registered voter may seek a temporary restraining order and an injunction prohibiting the publication, distribution, or broadcasting of any campaign material in violation of this section. Upon filing a petition under this section, the plaintiff may obtain a temporary restraining order in accordance with Section 527 of the Code of Civil Procedure.

(2) A candidate for public office whose likeness appears in a picture or photograph prohibited by subdivision (a) may bring a civil action against any person, firm, association, corporation, campaign



committee, or organization that produced, distributed, published, or broadcast the picture or photograph prohibited by subdivision (a). The court may award damages in an amount equal to the cost of producing, distributing, publishing, or broadcasting the campaign material that violated this section, in addition to reasonable attorney's fees and costs.

(d) (1) This act shall not apply to a holder of a license granted pursuant to the federal Communications Act of 1934 (47 U.S.C. Sec. 151 et seq.) in the performance of the functions for which the license is granted.

(2) This act shall not apply to the publisher or an employee of a newspaper, magazine, or other periodical that is published on a regular basis for any material published in that newspaper, magazine, or other periodical. For purposes of this subdivision, a "newspaper, magazine, or other periodical that is published on a regular basis" shall not include any newspaper, magazine, or other periodical that has as its primary purpose the publication of campaign advertising or communication, as defined by Section 304.

